

Khosa (Migration) [2023] AATA 1844 (13 April 2023)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Ms Veerpal Kaur Khosa
REPRESENTATIVE:	Mr Dushan Nikolic
CASE NUMBER:	1905786
HOME AFFAIRS REFERENCE(S):	BCC2017/3040544
MEMBER:	Rachel Westaway
DATE:	13 April 2023
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa: • cl 820.211(2)(a) of Schedule 2 to the Regulations

Statement made on 13 April 2023 at 10:50am

CATCHWORDS

MIGRATION – Partner (Temporary) (Class UK) visa – Subclass 820 (Partner) – genuine and continuing relationship – validly married – financial, household and social aspects of relationship and nature of commitment – length of relationship and birth of child – extensive documentary evidence and detailed, consistent and credible oral evidence – decision under review remitted

LEGISLATION

Migration Act 1958 (Cth), ss 5F, 65

Migration Regulations 1994 (Cth), Schedule 2, cl 820.211

CASE

He v MIBP [2017] FCAFC 206

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 378 of the Migration Act 1958 and replaced with generic information.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The applicant applied for the visa on 23 August 2017 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl 820.211(2)(a) because the delegate found that the applicant had not provided sufficient evidence to demonstrate that the applicant is the spouse or de facto partner of the sponsor, as defined under section 5F and 5CB of the Act.
4. The applicant appeared before the Tribunal on 13 April; 2023 at 9:30am to give evidence and present arguments. The Tribunal also received oral evidence from Mr Karaj Singh Gill the sponsor.
5. The applicant was represented in relation to the review.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The issue in the present case is whether the applicant can demonstrate that they are the spouse of the sponsor, as defined under section 5F of the Act, and therefore satisfy clause 820.211(2)(a) of the Regulations.
8. **Background**
9. The visa applicant, Veerpal Kaur Khosa ('the applicant'), is an Indian national who was born on [date] and is 28 years old. The applicant stated that they had not been in any previous relationships with persons other than the sponsor.
10. The sponsor, Karaj Singh Gill, is an Australian Permanent Resident who was born on [date] and is 32 years old. The sponsor declared one previous relationship which ended in divorce on 26 May 2012. There were no children of the relationship.
11. The applicant and the sponsor met in person for the first time on 27 July 2015 on Chapel Street in Melbourne. They committed to a shared life together to the exclusion of all others on 25 December 2016. The applicant and sponsor married on 16 August 2017 at Milsons Point in Australia.
12. **The Department application**
13. The applicant lodged a valid application for a Partner (Temporary) (Class UK) (Subclass 82) visa and a Partner (Residence) (Class BS) (Subclass 801) visa on 23 August 2017 on the

grounds of being in a partner relationship with an Australian Permanent Resident, the sponsor, who lodged a sponsorship in support of the application.

14. The following evidence was provided in support of the visa application:
 - Copy of the sponsor's Australian passport biodata page
 - Form 888 statutory declaration by Gurpartap Singh Virk dated 23 August 2017
 - Form 888 statutory declaration by Harpreet Singh dated 23 August 2017
 - Certificate of Marriage dated 16 August 2017
 - NSW Certified Marriage Certificate registered on 16 August 2017
 - Photographs of the marriage ceremony
15. On 16 January 2019, the Department wrote to the applicant requesting further information in support of their visa application, including further evidence of their relationship with the sponsor, evidence that the sponsor had ended their relationship with their former partner, and evidence that the sponsor is an Australian citizen or permanent resident. No response was provided by the applicant.
16. On 1 March 2019, the delegate of the Department made a decision to refuse to grant the applicant the visas, on the basis that the delegate was not satisfied on the evidence provided that the applicant was the spouse of the sponsor as defined by section 5F of Act. Particularly, the delegate found that the applicant had provided no evidence of the financial aspects of the relationship or the nature of the household, and very limited evidence of the social aspects of the relationship and the nature of the applicant and the sponsor's commitment to each other.
17. As the delegate found that the applicant did not meet the definition of spouse under section 5F of the Act, the delegate was not satisfied that they met clause 820.211(2)(a) of the Act and subsequently failed to meet the requirements of clause 820.211 and refused to grant the applicant the Subclass 820 visa. As the applicant was not the holder of a Subclass 820 visa, the delegate found that they did not satisfy the requirements of clause 801.221(8) and subsequently failed to satisfy clause 801.221. The application for a Subclass 801 visa was therefore also refused.

18. The Tribunal application

19. The applicant applied for review of the Department's decision on 12 March 2019. They provided a copy of the Department's decision record and notification letter with their application form.
20. On 6 March 2023, the Tribunal wrote to the applicant via their authorised representative under s.359(2) of the Act inviting them to provide further information to support their claims of being in a spouse or de facto relationship with the sponsor. The letter provided the applicant with 14 days to provide the request information or to request an extension of time to respond. The letter stated that if the Tribunal did not receive the information allowed or as extended the Tribunal may make a decision on the review without taking any further action to obtain the information. The letter also stated that if a response was not received in time, the applicant would lose any entitlement they might otherwise have had under the Act to appear before the Tribunal to give evidence and present arguments.

21. On 20 March 2023, the Tribunal received an email from the applicant's representative requesting an extension of time to respond to the Tribunal's invitation of 6 March 2023, for a further 14 days. On 21 March 2023, the Tribunal wrote to the applicant via their authorised representative to confirm that the Member has agreed to grant the extension of time for a further 14 days.
22. On 30 March 2023, the Tribunal received an email from the applicant's representative in response to its invitation to provide further information. This email included the following documents and submissions:
- Representative submission dated 30 September 2023
 - Passport of the applicant
 - Australian Passport of the sponsor
 - Divorce Certificate of the sponsor and his ex-wife dated 27 June 2017
 - Marriage Certificate dated 16 August 2017
 - Joint Statement of Relationship dated 28 March 2023
 - Form 888 statutory declaration of Mr Gurpartap Singh Virk dated 15 March 2023
 - Form 888 statutory declaration of Mr Sandeep Singh Virk dated 15 March 2023
 - Birth Certificate of Amyra Kaur Gill
 - Australian Passport of Amyra Kaur Gill
 - Ultrasound image of the applicant dated 18 February 2020
 - Assortment of picture of the applicant's maternity photo shoot
 - Form evidencing Amyra's enrolment in VIP Family Daycare, dated 14 February 2023
 - Assortment of pictures depicting Amyra as a newborn
 - Picture depicting the celebration of the birth of the applicant and the sponsor's daughter Amyra
 - A picture depicting the applicant, the sponsor, and their daughter Amyra at a dinner party to celebrate Amyra's birth
 - Assortment of pictures depicting the celebration of Amyra's first birthday
 - Assortment of pictures depicting the celebration of Amyra's second birthday
 - A picture depicting the applicant and sponsor with their daughter Amyra celebrating Christmas in 2022

- Pictures of the applicant and the sponsor with their daughter Amyra on outings as a family
- Screenshot of the sponsor's Centrelink Contact Details showing his spousal relationship with the applicant
- Australian Taxation Office Notice of Assessment for the applicant evidencing the previous address in New South Wales, dated 15 September 2020
- Assorted NAB bank account statements for the applicant and the sponsor dated between 11 May 2021 and 9 February 2023 showing payments between the couple for joint expenses and their joint bank account
- Assorted Commonwealth Bank account statements for the sponsor for the period between 1 April 2019 and 30 September 2022 showing payments between the couple for joint expenses
- The applicant's Commonwealth Bank account statement for the period between 1 April 2020 and 30 September 2022 showing payments between the couple for joint expenses
- Letter to the sponsor outlining the approval of a variable home loan, dated 20 July 2022
- NAB land valuation of the sponsor for the land owned by the couple, as at 10 January 2023, and a copy of the corresponding land valuation document
- Picture of gold chain gifted by the sponsor to the applicant dated 13 March 2023
- Receipt of Apple AirPods gifted by the sponsor to the applicant, dated April 15 2021
- Receipt of Apple Ipad gifted by the sponsor to the applicant, dated 2 July 2022
- Evidence of business arrangement, including copy of the ASIC extract for Gillson Logistics Pty Ltd and a copy of the truck registration documents
- Assorted rent payment receipts to Reliance Real Estate dated between 9 February 2023 and 8 March 2023
- The applicant and the sponsor's Simply Energy electricity bill dated 27 February 2023
- Picture of the sponsor's expired Australian driver licence showing evidence of the previous address in New South Wales
- Bundle of communication between the couple when apart, including telephone call logs and messages
- Picture of the applicant's parents first meeting with the sponsor

- Receipt showing flights booked for the applicant between Delhi and Sydney (return) for travel between 11 March 2019 and 15 March 2019
- Receipt showing flights booked for the applicant between Dehli and Sydney for travel on 2 April 2019
- Receipt showing evidence of the sponsor's flights between Sydney and Dehli (return), for travel dates 13 April 2018 and 24 April 2018
- Receipt showing evidence of the sponsor and the applicant's flights between Sydney and Dehli for travel date 11 January 2019
- Evidence of a dinner booking confirmation in Sydney, dated 28 May 2020
- Assortment of pictures of the applicant and the sponsor attending a wedding in India in 2019
- Picture depicting the attendance of the applicant and the sponsor at a birthday party with friends
- Pictures depicting the applicant and the sponsor at a family wedding
- Pictures depicting the applicant and the sponsor spending time with their family
- Picture of the sponsor attending a friend's wedding
- Receipt showing evidence of the sponsor's flight between Dehli and Sydney for travel date 1 March 2022
- Assortment of pictures of the applicant and the sponsor's wedding ceremony in Sydney
- Picture of the applicant and the sponsor visiting Eureka Tower with family
- Assortment of pictures of the applicant and the sponsor on a trip to Sydney
- Picture of the applicant and sponsor with a group of friends
- Assortment of pictures showing the applicant and the sponsor together and spending time with friends
- Assortment of pictures of the applicant and the sponsor attending social events
- Picture of the applicant and the sponsor on a trip to the Blue Mountains
- Assortment of pictures of the applicant and the sponsor on a trip to Brisbane
- Assortment of pictures of the applicant and the sponsor on a trip to Canberra
- Picture of the applicant and the sponsor on a trip to Newcastle
- Picture depicting the applicant and the sponsor together on valentine's day

- Assortment of images of the applicant celebrating her birthday with the sponsor and their daughter
- Images of the applicant, the sponsor, and their daughter on a coffee date

23.

SPOUSE/DE FACTO (cl 820.211(2)(a), (3)(e), (4)(e), (5)(e), (6)(d), cl 820.221)

Whether the parties are in a spouse or de facto relationship

24. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian Permanent Resident.
25. 'Spouse' is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s 5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in reg 1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in reg 1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

26. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. On the evidence, namely a Marriage Certificate dated 16 August 2017 the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s 5F(2)(a).

Are the other requirements for a spouse relationship met?

27. *Financial aspects of the relationship*

28. The following evidence was provided in support of the financial aspects of the relationship:
- Representative submission dated 30 September 2023
 - Australian Taxation Office Notice of Assessment for the applicant evidencing the previous address in New South Wales, dated 15 September 2020
 - Assorted NAB bank account statements for the applicant and the sponsor dated between 11 May 2021 and 9 February 2023 showing payments between the couple for joint expenses and their joint bank account
 - Assorted Commonwealth Bank account statements for the sponsor for the period between 1 April 2019 and 30 September 2022 showing payments between the couple for joint expenses

- The applicant's Commonwealth Bank account statement for the period between 1 April 2020 and 30 September 2022 showing payments between the couple for joint expenses
- Letter to the sponsor outlining the approval of a variable home loan, dated 20 July 2022
- NAB land valuation of the sponsor for the land owned by the couple, as at 10 January 2023, and a copy of the corresponding land valuation document
- Picture of gold chain gifted by the sponsor to the applicant dated 13 March 2023
- Receipt of Apple AirPods gifted by the sponsor to the applicant, dated April 15 2021
- Receipt of Apple Ipad gifted by the sponsor to the applicant, dated 2 July 2022
- Evidence of business arrangement, including copy of the ASIC extract for Gillson Logistics Pty Ltd and a copy of the truck registration documents
- Assorted rent payment receipts to Reliance Real Estate dated between 9 February 2023 and 8 March 2023
- The applicant and the sponsor's Simply Energy electricity bill dated 27 February 2023

29. *Nature of the household*

30. The following evidence was provided in support of the nature of the household:

- Representative submission dated 30 September 2023
- Birth Certificate of Amyra Kaur Gill
- Australian Passport of Amyra Kaur Gill
- Ultrasound image of the applicant dated 18 February 2020
- Assortment of picture of the applicant's maternity photo shoot
- Form evidencing Amyra's enrolment in VIP Family Daycare, dated 14 February 2023
- Assortment of pictures depicting Amyra as a newborn
- Picture depicting the celebration of the birth of the applicant and the sponsor's daughter Amyra
- A picture depicting the applicant, the sponsor, and their daughter Amyra at a dinner party to celebrate Amyra's birth
- Assortment of pictures depicting the celebration of Amyra's first birthday

- Assortment of pictures depicting the celebration of Amyra's second birthday
- A picture depicting the applicant and sponsor with their daughter Amyra celebrating Christmas in 2022
- Pictures of the applicant and the sponsor with their daughter Amyra on outings as a family
- Assorted rent payment receipts to Reliance Real Estate dated between 9 February 2023 and 8 March 2023
- The applicant and the sponsor's Simply Energy electricity bill dated 27 February 2023
- Picture of the sponsor's expired Australian driver licence showing evidence of the previous address in New South Wales
- Assortment of images of the applicant celebrating her birthday with the sponsor and their daughter
- Images of the applicant, the sponsor, and their daughter on a coffee date

31. *Social aspects of the relationship*

32. The following evidence was provided in support of the social aspects of the relationship:

- Representative submission dated 30 September 2023
- Form 888 statutory declaration of Mr Gurpartap Singh Virk dated 15 March 2023
- Form 888 statutory declaration of Mr Sandeep Singh Virk dated 15 March 2023
- Evidence of a dinner booking confirmation in Sydney, dated 28 May 2020
- Assortment of pictures of the applicant and the sponsor attending a wedding in India in 2019
- Picture depicting the attendance of the applicant and the sponsor at a birthday party with friends
- Pictures depicting the applicant and the sponsor at a family wedding
- Pictures depicting the applicant and the sponsor spending time with their family
- Picture of the sponsor attending a friend's wedding
- Assortment of pictures of the applicant and the sponsor's wedding ceremony in Sydney
- Picture of the applicant and the sponsor visiting Eureka Tower with family
- Assortment of pictures of the applicant and the sponsor on a trip to Sydney

- Picture of the applicant and sponsor with a group of friends
- Assortment of pictures showing the applicant and the sponsor together and spending time with friends
- Assortment of pictures of the applicant and the sponsor attending social events
- Picture of the applicant and the sponsor on a trip to the Blue Mountains
- Assortment of pictures of the applicant and the sponsor on a trip to Brisbane
- Assortment of pictures of the applicant and the sponsor on a trip to Canberra
- Picture of the applicant and the sponsor on a trip to Newcastle
- Picture depicting the applicant and the sponsor together on valentine's day

33. *Nature of persons' commitment to each other*

34. The following evidence was provided in support of the nature of persons' commitment to each other:

- Representative submission dated 30 September 2023
- Divorce Certificate of the sponsor and his ex-wife dated 27 June 2017
- Marriage Certificate dated 16 August 2017
- Joint Statement of Relationship dated 28 March 2023
- Bundle of communication between the couple when apart, including telephone call logs and messages
- Picture of the applicant's parents first meeting with the sponsor
- Receipt showing flights booked for the applicant between Delhi and Sydney (return) for travel between 11 March 2019 and 15 March 2019
- Receipt showing flights booked for the applicant between Dehli and Sydney for travel on 2 April 2019
- Receipt showing evidence of the sponsor's flights between Sydney and Dehli (return), for travel dates 13 April 2018 and 24 April 2018
- Receipt showing evidence of the sponsor and the applicant's flights between Sydney and Dehli for travel date 11 January 2019
- Receipt showing evidence of the sponsor's flight between Dehli and Sydney for travel date 1 March 2022
- Assortment of pictures of the applicant and the sponsor's wedding ceremony in Sydney
- Birth Certificate of Amyra Kaur Gill

- Australian Passport of Amyra Kaur Gill
- Ultrasound image of the applicant dated 18 February 2020
- Assortment of picture of the applicant's maternity photo shoot
- Form evidencing Amyra's enrolment in VIP Family Daycare, dated 14 February 2023

35. Evidence taken at hearing

36. The applicant and sponsor provided consistent and detailed evidence at hearing.
37. They have a daughter called Amyra who is two and a half. She was born by natural delivery at Royal Prince Alfred hospital in Sydney and Mr Gill was in attendance.
38. The applicant and sponsor discussed their shared care of Amyra and her introduction to day care.
39. They have recently purchased a truck for approximately \$80,000 which Mr Gill will drive and establish his own trucking business.
40. Both the applicant and sponsor explained the truck and the additional work required for it to undertake container deliveries.
41. Mr Gill was able to discuss in detail Ms Khosa's employment as a medicator in an aged care home and how they save and divide their income.
42. The applicant and sponsor discussed their move from Sydney to Melbourne and the rental of their property in Tarneit.
43. The Tribunal has had regard to the documentary evidence provided with the primary application and a substantial amount of additional documentary evidence that was provided to the Tribunal throughout the review. The Tribunal has also had the benefit of the parties' oral evidence and found their evidence to be consistent, credible and detailed.
44. The Tribunal is satisfied that since the time the applicant and sponsor have been together, they lived together and have established a joint household. They gave consistent evidence about their living arrangements, stating that they share housework like cooking and childcare. There is evidence before the Tribunal corroborating their daughter being in day care as described.
45. The applicant and sponsor have established a savings plan and have purchased a block of land and a truck.
46. The Tribunal accepts they have joint responsibilities for the care of their daughter and a commitment to their future.
47. There is evidence before the Tribunal about the sharing of finances. The Tribunal accepts that the couple operates a joint account and individual accounts which their salary goes into. The documentary evidence before the Tribunal confirms that they share their daily expenses such as domestic bills and household expenses. The Tribunal accepts that evidence and accepts that the applicant and sponsor pool their financial resources and share household expenses.

48. The Tribunal is in receipt of numerous pictures of the couple at functions and with their daughter attesting to their claim that the relationship is a genuine one. The Tribunal accepts that they represent themselves to others as being in a marital relationship and that others view the relationship as a long term one.
49. The relationship has been in existence for over six years. The parties spoke about the emotional support they provide to each other and the sponsor also spoke about their commitment to a tradition wedding for their parents. The Tribunal accepts that the applicant and sponsor have lived together for a lengthy period and that they view the relationship as a long term one. The Tribunal acknowledges the couple have a daughter. The Tribunal accepts that the applicant and sponsor rely on each other for companionship and emotional support.
50. The Tribunal acknowledged the delegate's concerns as no information was provided to support their application. The Tribunal is mindful that there is a lot more evidence before the Tribunal that was not available to the delegate and also that more time has now passed, rendering the relationship a long term one. The applicant stated that her former migration agent never passed the request for further information onto them and as such they did not provide anything. Having regard to all the evidence before it, the Tribunal is satisfied that the applicant and sponsor have a mutual commitment to shared life to the exclusion of others. The Tribunal is satisfied their relationship is genuine and continuing. The Tribunal is satisfied they live together.
51. On the basis of the above the Tribunal is satisfied that the requirements of s 5F(2) are met at the time the visa application was made and the time of this decision. Therefore, the applicant meets cl 820.211(2)(a) and the relationship aspect of cl 820.221. The Tribunal makes no findings in relation to other aspects of cl. 820.221.

52. **Conclusion**

53. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

54. **DECISION**

55. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:
- cl 820.221(2)(a) of Schedule 2 to the Regulations

Rachel Westaway
Senior Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).